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c 46 Justices of the Peace Act, 1989

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CHAPTER 46

An Act to revise the Justices of the Peace Act

Assented to July 26th, 1989

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“Co-ordinator” means the Co-ordinator of Justices of the Peace appointed under section 13; (“coordonnateur”)

“non-presiding justice of the peace” means a person designated as a non-presiding justice of the peace under section 4; (“juge de paix non-président”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“presiding justice of the peace” means a person designated as a presiding justice of the peace under section 4; (“juge de paix-président”)

“regulations” means the regulations made under this Act; (“règlements”)

“Review Council” means the Justices of the Peace Review Council continued by section 9. (“Conseil d’évaluation”)

Appointment
of justices

2.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint full-time and part-time justices of the peace.

Transition

R.S.O. 1980,
c. 227

(2) Every person who receives a salary as a justice of the peace in accordance with subsection 7 (2) of the *Justices of the Peace Act* immediately before this Act comes into force shall be deemed to have been appointed as a full-time justice of the peace and every other person who is a justice of the peace immediately before this Act comes into force shall be deemed to have been appointed as a part-time justice of the peace.

Reappoint-
ment as
part-time

(3) The Lieutenant Governor in Council shall not appoint a full-time justice of the peace to be a part-time justice of the peace unless the Review Council recommends the reappointment.

Other work

(4) A justice of the peace shall not engage in any other remunerative work without the approval of the Review Council.

Oath of
office

3. Every justice of the peace, before beginning the duties of office, shall make the following oath or affirmation in French or in English:

I,, solemnly swear (affirm) that I will faithfully and to the best of my skill and knowledge, execute the duties of a justice of the peace, and I will do so without fear or favour, affection or ill will. So help me God. (Omit last sentence in an affirmation.)

Presiding or
non-presiding

4.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall designate every justice of the peace appointed after the coming into force of this Act as a presiding justice of the peace or a non-presiding justice of the peace.

Deemed
designation

(2) Every justice of the peace who is authorized to preside at the trial of an offence described in clause 16 (c) (provincial offences) immediately before this Act comes into force and has not attained the age of seventy at that time shall be deemed to have been designated as a presiding justice of the peace.

Designation
of other
justices

(3) The Lieutenant Governor in Council, on the recommendation of the Review Council, may designate any other justice of the peace who is appointed before this Act comes into force and has not attained the age of seventy as a presid-

ing justice of the peace or a non-presiding justice of the peace.

Undesignated
justices

(4) A person appointed as a justice of the peace before this Act comes into force who is not designated under subsection (2) or (3) shall not exercise any authority or receive any remuneration as a justice of the peace.

Change of
designation

(5) The Lieutenant Governor in Council shall not change the designation of a presiding justice of the peace to that of non-presiding justice of the peace.

Justices of
the peace,
ex officio

5. Every judge of the Supreme Court of Canada, the Federal Court of Canada, the Supreme Court of Ontario and the District Court of Ontario and every provincial judge is by virtue of his or her office a justice of the peace and also has power to do alone whatever two or more justices of the peace are authorized to do together.

Retirement

6. Every justice of the peace shall retire upon attaining the age of seventy years.

Resignation

7.—(1) A justice of the peace may resign from his or her office by delivering a signed letter of resignation to the Attorney General.

Effective
date

(2) The resignation takes effect on the day the letter is delivered to the Attorney General or, if the letter specifies a later day, on that day.

Removal
from office

8.—(1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

Grounds for
removal

(2) The order may be made only if,

(a) a complaint regarding the justice of the peace has been made to the Review Council; and

(b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) infirmity,

(ii) conduct that is incompatible with the execution of the duties of his or her office, or

- (iii) having failed to perform the duties of his or her office as assigned.

Order to be
tabled

(3) The order shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

Review
Council

9.—(1) The Justices of the Peace Review Council is continued and shall be composed of,

- (a) the Chief Judge of the Provincial Court (Criminal Division) who shall preside over the Review Council;
- (b) the Chief Judge of the Provincial Court (Family Division);
- (c) the Co-ordinator;
- (d) a justice of the peace appointed by the Lieutenant Governor in Council; and
- (e) not more than two other persons appointed by the Lieutenant Governor in Council.

Quorum

(2) A majority of members of the Review Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Review Council.

Staff

R.S.O. 1980,
c. 418

(3) Such officers and employees of the Review Council as are considered necessary may be appointed under the *Public Service Act*.

Expert
assistance

(4) The Review Council may engage persons, including counsel, to assist it in its investigations.

Functions

10.—(1) The functions of the Review Council are,

- (a) to consider all proposed appointments and designations of justices of the peace and make reports concerning them to the Attorney General;
- (b) to receive and investigate complaints against justices of the peace.

Liability for
damages

(2) No action or other proceeding for damages shall be instituted against the Review Council or its members or officers or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty.

Investigation
of complaints

11.—(1) When the Review Council receives a complaint against a justice of the peace, it shall take such action to investigate the complaint, including a review of it with the justice of the peace, as it considers advisable.

Referral to
Co-ordinator

(2) The Review Council may, if it considers it appropriate to do so, transmit complaints to the Co-ordinator.

Proceedings
not public

(3) The proceedings of the Review Council shall not be public, but it may inform the Attorney General that it has undertaken an investigation and the Attorney General may make that fact public.

Prohibiting
publication

(4) The Review Council may order that information or documents relating to its investigation not be published or disclosed except as required by law.

Powers

R.S.O. 1980,
c. 411

(5) The Review Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

Notice of
disposition

(6) When the Review Council has dealt with a complaint regarding a justice of the peace, it shall inform,

(a) the person who made the complaint; and

(b) the justice of the peace, if the complaint was brought to his or her attention,

of its disposition of the complaint.

Report and
recommen-
dations

(7) The Review Council may report its opinion regarding the complaint to the Attorney General and may recommend,

(a) that an inquiry be held under section 12;

(b) that the justice of the peace be compensated for all or part of his or her costs in connection with the investigation.

Copy to
justice

(8) A copy of the report shall be given to the justice of the peace.

Right to be
heard

(9) The Review Council shall not make a report unless the justice of the peace was notified of the investigation and given an opportunity to be heard and to produce evidence.

Publication
of report

(10) The Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so.

Transition
R.S.O. 1980,
c. 227

(11) An investigation commenced under section 8 of the *Justices of the Peace Act* but not completed before this Act comes into force shall be continued in accordance with this Act by the Review Council as constituted under that section.

Inquiry

12.—(1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the question of whether a justice of the peace should be removed from office.

Powers
R.S.O. 1980,
c. 411

(2) The *Public Inquiries Act* applies to the inquiry.

Report

(3) The report of the inquiry may recommend,

- (a) that the justice of the peace be removed from office;
- (b) that the justice of the peace be compensated for all or part of his or her costs in connection with the inquiry.

Tabling of
report

(4) The report shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

Co-ordinator
appointed

13.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall appoint a provincial judge as Co-ordinator of Justices of the Peace.

Term of
office

(2) The Co-ordinator shall hold office for five years.

Idem

(3) If a successor is not appointed within five years, the Co-ordinator shall continue in office until the successor is appointed, but in no case shall the Co-ordinator hold office for more than seven years.

Former
Co-ordinator

(4) A Co-ordinator whose term of office expires under subsection (2) or (3) shall continue to hold the office of provincial judge and is entitled to an annual salary equal to the greater of,

- (a) the current annual salary of a provincial judge; or
- (b) the annual salary he or she received immediately before ceasing to be Co-ordinator.

Co-ordinator
not to be
reappointed

(5) A Co-ordinator whose term of office expires under subsection (2) or (3) shall not be reappointed as Co-ordinator.

Co-ordinator
to supervise
justices,
assign duties

14.—(1) The Co-ordinator has general supervision and direction over sittings of justices of the peace and the assignment of their duties, subject to the direction of the Chief Judge of the Provincial Court (Criminal Division) or, in matters relating to the jurisdiction of the Provincial Court (Family Division), the Chief Judge of that court.

Idem

(2) The Co-ordinator's authority to assign duties includes authority to direct the times and places that justices of the peace shall perform their duties.

Part-time
justices to
follow duty
roster

(3) A part-time justice of the peace shall not act as a justice of the peace except in accordance with a duty roster established by the Co-ordinator.

Duty rosters
public

(4) The duty rosters shall be made available to the public.

Reports on
duties
performed

(5) Part-time justices of the peace shall submit to the Co-ordinator, when required by the Co-ordinator, reports containing the prescribed information on the duties they have performed.

Assistance to
Co-ordinator

(6) Provincial judges shall assist the Co-ordinator in the supervision of justices and assignment of their duties and in the exercise of the Co-ordinator's other functions under this section, if the Co-ordinator or a chief judge so requests, and for the purpose they have the Co-ordinator's authority.

Assignment
of duties to
presiding
justice

15.—(1) The following duties shall not be assigned to a presiding justice of the peace:

R.S.C. 1985,
c. C-46

- (a) presiding at the trial of an offence under the *Criminal Code* (Canada);
- (b) presiding at the trial of an offence under any other Act of the Parliament of Canada, unless the offence is prescribed as an offence to the trial of which a presiding justice of the peace may be assigned;
- (c) holding a preliminary inquiry under Part XVIII of the *Criminal Code* (Canada);
- (d) exercising jurisdiction under section 67 (reading proclamation at riot), paragraph 537 (1) (b) or subsection 537 (2) or (3) (where accused may be men-

R.S.C. 1985,
c. C-46

tally ill) or section 543 (remand where offence committed in another jurisdiction) of the *Criminal Code* (Canada).

Exception (2) Subsection (1) does not apply to adjournments.

Assignment
of duties to
non-presiding
justice

16. The following duties shall not be assigned to a non-presiding justice of the peace:

- (a) the duties described in section 15;
- (b) presiding at the trial of an offence that is prescribed as one to the trial of which a presiding justice of the peace may be assigned;
- (c) presiding at the trial of an offence under an Act of the Legislature or under a regulation or by-law made under the authority of such an Act;
- (d) exercising jurisdiction under section 7 (plea of guilty with representations) or 9 or 19 (default conviction) of the *Provincial Offences Act*;
- (e) presiding at a hearing to determine whether a person should be released from or detained in custody;
- (f) exercising authority to issue a warrant to levy a tax, toll or dues under,

R.S.C. 1985,
c. P-38

(i) section 33 of the *Public Works Act* (Canada),

R.S.O. 1980,
c. 229

(ii) section 66 of the *Lakes and Rivers Improvement Act*, or

R.S.O. 1980,
c. 302

(iii) subsection 387 (6) of the *Municipal Act*;

- (g) determining whether a thing should be forfeited or held under,

R.S.C. 1985,
c. M-7

(i) section 8 of the *Migratory Birds Convention Act* (Canada), or

R.S.C. 1985,
c. N-14

(ii) subsection 8 (3) of the *National Parks Act* (Canada);

R.S.O. 1980,
c. 262

(h) determining whether an order should be issued under section 10 of the *Mental Health Act* (examination by physician);

(i) presiding at a hearing to determine a dispute under,

R.S.C. 1985,
c. S-9

(i) section 205 of the *Canada Shipping Act*,

R.S.C. 1985,
c. F-14

(ii) section 11 of the *Fisheries Act* (Canada),

R.S.O. 1980,
c. 257

(iii) section 4 of the *Master and Servant Act*, or

R.S.O. 1980,
c. 372

(iv) section 25, 26 or 27 of the *Pawnbrokers Act*;

(j) a duty that is prescribed as one that shall not be assigned to a non-presiding justice.

Jurisdiction
of justices

17.—(1) Justices of the peace have jurisdiction throughout Ontario.

Idem

(2) Subject to sections 15 and 16, justices of the peace shall exercise the powers and perform the duties conferred or imposed on a justice of the peace by or under an Act of the Legislature or of the Parliament of Canada.

Justices to
assist public

(3) Justices of the peace shall assist members of the public, at their request, in formulating informations in respect of offences.

Salary of
part-time
justices

18. The salary, if any, to which each part-time justice of the peace is entitled shall be based on the Co-ordinator's determination of the justice's workload and calculated in accordance with the regulations.

Directions

19.—(1) The Co-ordinator may issue directions to justices of the peace on questions of law and procedure.

Directions
binding on
justices

(2) Justices of the peace shall follow a direction issued under subsection (1) unless it has been disapproved by a court on an appeal or a review.

Directions to
be published

(3) The Co-ordinator shall cause the directions to be published in *The Ontario Gazette*.

Immunity
from liability

20. A justice of the peace has the same immunity from liability as a judge of the Supreme Court.

Regulations

21.—(1) The Lieutenant Governor in Council may make regulations,

R.S.C. 1985,
c. C-46

- (a) prescribing offences under Acts of Parliament other than the *Criminal Code* (Canada) in respect of which a presiding justice of the peace may be assigned to preside at a trial;
- (b) prescribing the information to be included in reports under subsection 14 (5);
- (c) prescribing the salaries of full-time justices of the peace and prescribing the manner in which the salaries of part-time justices of the peace shall be calculated, including the factors to be taken into account and the method of calculation to be used;
- (d) providing for the benefits to which full-time and part-time justices of the peace are entitled;
- (e) providing for the payment of additional compensation to full-time and part-time justices of the peace for special assignments;
- (f) prescribing duties that shall not be assigned to a non-presiding justice of the peace.

Classes

(2) A regulation made under clause (1) (c) or (d) may prescribe classes of full-time and part-time justices of the peace for the purpose of salaries and benefits.

Justices of
the peace
who are
public
servants

(3) A regulation made under clause (1) (c) or (d) may provide that the duties performed, in the course of their public service employment, by justices of the peace who are also employed in the public service of Ontario shall not be considered in calculating their salary and benefits under this Act.

Contributions

(4) A regulation made under clause (1) (d) may require justices of the peace to contribute from their salaries part of the cost of a benefit and may fix the amount of the contributions.

Benefits

(5) A regulation made under clause (1) (d) may provide that justices of the peace whose salaries are less than prescribed amounts are not entitled to prescribed benefits.

Territorial limitations

(6) A regulation made under clause (1) (e) may be limited territorially.

Application of certain provisions

22.—(1) Sections 4, 15, 16 and 18 and subsection 17 (2) do not apply in an area in Ontario until the Lieutenant Governor in Council by regulation provides that they apply in that area.

Idem

(2) The following apply in any area in which sections 4, 15, 16 and 18 and subsection 17 (2) do not apply:

1. Justices of the peace shall exercise the powers and perform the duties conferred or imposed on a justice of the peace by or under an Act of the Legislature or of the Parliament of Canada when so directed by the Co-ordinator or a judge designated by the Co-ordinator.
2. Part-time justices of the peace shall be paid such fees, allowances and expenses as are prescribed under the *Administration of Justice Act*.
3. Despite section 6, a part-time justice of the peace appointed before the day section 6 comes into force may exercise the powers and perform the duties of a justice of the peace after attaining the age of seventy years when assigned to do so by the Co-ordinator or a judge designated by the Co-ordinator.

R.S.O. 1980,
c. 6

Regulations

(3) The Lieutenant Governor in Council may make regulations declaring that sections 4, 15, 16 and 18 and subsection 17 (2) apply in one or more areas of the Province.

23.—(1) Section 2 of the *Commissioners for taking Affidavits Act*, being chapter 75 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Provincial judges, justices of the peace

(1a) Every provincial judge and every justice of the peace is *ex officio* a commissioner for taking affidavits in Ontario.

(2) Section 13 of the said Act is amended by striking out “notary public or justice of the peace” in the third line and inserting in lieu thereof “or notary public”.

24. Subsection 61 (3) of the *Courts of Justice Act, 1984*, being chapter 11, is repealed.

25. Paragraph 1 of subsection 5 (1) of the *Election Act, 1984*, being chapter 54, is amended by adding at the end thereof “or justices of the peace”.

26. The *Justices of the Peace Act*, being chapter 227 of the Revised Statutes of Ontario, 1980, the *Justices of the Peace Amendment Act, 1984*, being chapter 8 and section 22 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.

27. Clause 8 (2) (c) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is amended by striking out “justice of the peace” in the first line.

28. Subsection 13 (1) of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed.

29.—(1) Sections 1, 2, 3 and 5 and subsection 6 (1) of the *Public Authorities Protection Act*, being chapter 406 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 7 (1) of the said Act is amended by striking out “against the justice of the peace who made the conviction or” in the second and third lines.

Commence-
ment

30. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

31. The short title of this Act is the *Justices of the Peace Act, 1989*.